

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LINDA L. VADEN)	
Claimant)	
)	
VS.)	
)	
FOCUS DEVELOPMENT CENTER)	
Respondent)	Docket No. 251,732
)	
AND)	
)	
LIBERTY MUTUAL INSURANCE CO.)	
Insurance Carrier)	

LINDA L. VADEN)	
Claimant)	
)	
VS.)	
)	
PIZZA HUT)	
Respondent)	Docket No. 1,001,744
)	
AND)	
)	
LEGION INSURANCE CO.)	
Insurance Carrier)	

ORDER

Pizza Hut and Legion Insurance Co. request review of the April 30, 2007 Post Award Medical Award by Administrative Law Judge Nelsonna Potts Barnes. This is a post-award proceeding for medical benefits. The case has been placed on the summary docket for disposition without oral argument.

APPEARANCES

Robert R. Lee of Wichita, Kansas, appeared for the claimant. Matthew J. Schaefer of Wichita, Kansas, appeared for Pizza Hut and Legion Insurance Co. Jon E. Newman of Wichita, Kansas, appeared for Pizza Hut and Commerce & Industry Insurance Co.

Anton C. Andersen of Kansas City, Kansas, appeared for Focus Development Center and Liberty Mutual Insurance Co.

RECORD AND STIPULATIONS

The Board has considered the post award record and adopted the stipulations listed in the Award.

ISSUES

In Docket No. 251,732, the claimant was awarded compensation for bilateral knee injuries suffered while restraining a resident during her employment with Focus Development Center. In Docket No. 1,001,744, the claimant entered into an Agreed Award for injuries to her low back and left knee (reserving the right to litigate any permanent impairment in the right knee) as a result of injuries suffered in a fall onto both knees during her employment with Pizza Hut.

When claimant sought additional medical treatment for both knees in 2003 the two claims were consolidated as each respondent alleged the other was responsible for claimant's treatment for her knees. A series of post-award hearings followed which resulted in claimant being provided treatment while the issue of ultimate liability for the treatment was reserved. During this extended interval the claimant continued working for respondent Pizza Hut and as a result, Legion, the insurance company which had coverage when claimant was injured in the fall, filed a motion to implead the insurance carriers that subsequently provided coverage for Pizza Hut. And after claimant's employment at Pizza Hut ended she suffered a fall at home.

Finally, the Administrative Law Judge (ALJ) entered a decision and determined claimant's fall at home was not an intervening accident as she suffered no additional injury. The ALJ denied Legion's motion to implead the subsequent insurance carriers for Pizza Hut. The ALJ further found claimant suffered an increase in symptomatology of her bilateral knees as a result of her fall on February 25, 2001, while working for Pizza Hut and during Legion's coverage. Consequently, the ALJ ordered Pizza Hut and Legion to provide claimant conservative medical treatment for both knees with Dr. Brian Davis.

Pizza Hut and Legion request review of the following: (1) whether claimant sustained an intervening accident; (2) whether claimant suffered an aggravation of a preexisting condition in her right knee; and, (3) whether claimant suffered an accident each and every working day. Pizza Hut/Legion argue claimant suffered a series of micro-traumas through her last day of employment and therefore the insurance carrier who had coverage during claimant's last day of employment should be liable for benefits. In the alternative, Pizza Hut/Legion argue claimant sustained an intervening accident at home which would alleviate all respondents and insurance carriers of their liability.

Pizza Hut and Commerce & Industry Insurance Company argue that Commerce was not a proper party to the proceedings and cannot be added to these proceedings. In the alternative, Commerce argues there is no evidence claimant suffered injury during its coverage period. Commerce requests the Board affirm the ALJ's denial of the motion to implead subsequent insurer's for Pizza Hut.

Focus Development and Liberty Mutual Insurance Co. (Liberty) as well as claimant argue claimant suffered a permanent aggravation of her preexisting condition in her right knee while working for Pizza Hut and therefore the ALJ's Post Award Medical should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The ALJ's Post Award Medical sets out the relevant facts in detail. It is not necessary to repeat those herein. The Board finds the ALJ's findings of fact to be accurate and adopts those findings as its own as if specifically set forth in this order.

In summary, the claimant suffered bilateral knee injuries while working for respondent Focus Development Center (Docket No. 251,732). As a result of those injuries Dr. Bradley Bruner performed surgery on claimant's right knee on January 27, 1999. Claimant developed left knee problems and Dr. Bruner concluded claimant's left knee injury was the natural and probable consequence of the right knee injury as a result of over compensating for the right knee. Claimant received an award based upon bilateral permanent knee injuries.

As claimant received treatment she continued to work for Focus Development Center until approximately the end of March 1999. She then found employment with Pizza Hut in August 2000. At that time claimant was still receiving follow-up treatment from Dr. Bruner for her right knee.

On February 25, 2001, claimant fell in the walk-in freezer at Pizza Hut (Docket No. 1,001,744) and landed on both of her knees on a concrete floor. Claimant was provided treatment for her left knee as a result of this injury. On December 14, 2001 Dr. Bruner performed surgery on claimant's left knee. This claim was resolved by an Agreed Award on December 5, 2002, for a whole person functional impairment as a result of claimant's injuries to her low back and left knee. The parties reserved the right to litigate the issue of whether claimant suffered permanent impairment to the right knee.

The claimant continued to work for Pizza Hut and in 2003 made a request for post award medical treatment for her bilateral knees. As she continued working at Pizza Hut

she noted her knees worsened. Claimant testified that she only worked 10 to 12 hours a week. She quit working for Pizza Hut in July 2004. But she noted she always had knee pain when standing. In November 2004 as she was going up the stairs to her house her right knee gave out and she fell landing on both knees.

After the initial post award hearing in this matter, the ALJ ordered claimant to select a physician from a list of three doctors and the doctor selected was to examine and evaluate claimant's condition and offer a causation opinion and treatment recommendations. Dr. Robert L. Eyster was selected and he examined claimant on April 16, 2003.

Dr. Eyster testified that when claimant fell on her right knee at Pizza Hut she aggravated the underlying degenerative condition in her right knee. But the doctor did not think that fall permanently aggravated claimant's right knee. Nonetheless, Dr. Eyster agreed claimant needed treatment and medication as a result of that fall. And Dr. Eyster did not think claimant permanently aggravated the right knee by working a few hours a week. But Dr. Eyster agreed that claimant's work activity caused increased symptoms. Finally, the doctor agreed that it would be reasonable to provide claimant with pain medication and anti-inflammatory medication.

Dr. Bradley W. Bruner was claimant's treating physician for both knee injuries. Dr. Bruner testified that after he performed the surgery on claimant's right knee she continued to have pain in her right knee. Her ongoing right knee pain was treated with Synvisc injections. And claimant developed left knee pain from over compensating for the right knee. Dr. Bruner continued to treat claimant for bilateral knee complaints through a regularly scheduled appointment on March 1, 2001, when claimant described a fall at work at Pizza Hut. Claimant complained of bilateral knee pain. Dr. Bruner ultimately performed surgery on claimant's left knee as a result of that fall. The doctor last saw claimant on April 23, 2002.

Dr. Bruner testified that the fall at Pizza Hut did not permanently aggravate claimant's right knee. But the doctor further opined that just being up on her feet would aggravate her knee whether at work or at home. Dr. Bruner agreed that after claimant injured her knees in the fall at Pizza Hut the complaints of right knee pain increased because of compensating for the operated on left knee.

The doctor testified:

Q. You testified from the 1998 accident that as a result of overuse of her right knee that she also had injury to her left knee. Do you recall that?

A. Yes.

Q. Now, do you believe that the injury that she had to her left knee in 2001 where you ended up doing a medial meniscectomy caused additional problems for her right knee for trying to compensate?

A. Yeah, I think it did.

Q. So would that basically be a similar situation from 1998 as it was in 2001?

A. Yeah, I think you could say those two things would tend to aggravate each other.¹

Dr. Bruner agreed claimant will continue to need pain medication as well as anti-inflammatory medication.

Dr. Eyster concluded claimant did not suffer a permanent additional impairment to her left knee either as a result of the fall at Pizza Hut or her continued employment activities at Pizza Hut. But he agreed that claimant's pain symptomatology increased after the fall at Pizza Hut and required medical treatment. Dr. Bruner initially agreed that the fall at Pizza Hut did not permanently impair claimant's right knee but then he explained that overcompensating for the left knee did aggravate the right knee. And the fall at Pizza Hut increased the symptomatology in both knees which required medical treatment.

The ALJ analyzed the medical evidence and concluded:

Whether claimant's condition is temporary or permanent, it is clear that she experienced an increase in the symptomatology of her bilateral knees which is attributable to Pizza Hut and its insurance carrier, Legion Insurance Company.

The Board agrees and affirms. Moreover, Dr. Eyster testified claimant did not further aggravate her bilateral knees while working a few hours a week at Pizza Hut. Although Dr. Bruner did indicate that any standing would aggravate claimant's underlying degenerative arthritis, in the final analysis he attributed claimant's right knee pain to overcompensating for the left. And the left was further injured in the fall at Pizza Hut.

Finally, the claimant described a fall at home where her knee gave out while she was walking up the stairs. Absent further medical evidence it cannot be said this incident was an intervening accident.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated April 30, 2007, is affirmed.

¹ Bruner Depo. at 37-38.

IT IS SO ORDERED.

Dated this 31st day of July 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert R. Lee, Attorney for Claimant
Matthew J. Schaefer, Attorney for Pizza Hut and Legion Ins. Co.
Jon E. Newman, Attorney for Pizza Hut and Commerce & Industry Ins. Co.
Anton C. Andersen, Attorney for Focus and Liberty Mutual Ins. Co.
Nelsonna Potts Barnes, Administrative Law Judge